



COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
NORTHEAST REGIONAL OFFICE

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February 19, 2010

Mr. William Thibeault  
New Ventures Associates, LLC  
85-87 Boston Street  
Everett, Massachusetts 02149

Re: NEWBURYPORT – Solid Waste/COR  
Crow Lane Landfill  
FMF # 39545  
**Paragraph 27 Notice**  
**Noncompliance with Final Judgment**

Richard A. Nylen Jr, Attorney at Law  
Lynch, DeSimone & Nylen, LLP  
12 Post Office Square  
Boston, MA 02109

Dear Mr. Thibeault and Mr. Nylen:

As described below, the Massachusetts Department of Environmental Protection ("MassDEP") has determined that New Ventures Associates, LLC ("New Ventures") is in noncompliance with the requirements of the Settlement Agreement and Final Judgment in *Commonwealth v. New Ventures Associates, LLC*, Suffolk Superior Court C.A. 06-0790 C, as amended by Orders of the court on May 27, 2009 and October 7, 2009 (the "Final Judgment") for completing closure of the Crow Lane Landfill (the "Landfill") in Newburyport, Massachusetts. This determination is based in part on observations at the Landfill by MassDEP's consultant, Shaw Environmental, Inc. of Salem, New Hampshire, along with MassDEP's review of information provided by New Ventures and of MassDEP's files.

1. New Ventures continues to fail to take adequate actions and implement the measures necessary to operate the pretreatment system in compliance with the requirements of the Final Judgment. On Monday, February 15, 2010 and Tuesday, February 16, 2010, Shaw personnel observed that during three separate hourly sampling events the outlet concentration of hydrogen sulfide ("H<sub>2</sub>S") from the landfill gas pretreatment system exceeded 1.01 lbs/hr and/or that the pretreatment system was removing less than 95% of the H<sub>2</sub>S from the landfill gas. Appendix B of the Settlement Agreement and Final Judgment requires that the maximum outlet concentration of H<sub>2</sub>S from the pretreatment system shall not exceed 1.01 lb/hr and that the pretreatment system remove a minimum of 95% of the H<sub>2</sub>S. MassDEP has previously notified New Ventures on repeated occasions, as recently as February 2, 2010, of its failure to operate the pretreatment system in accordance with these performance standards of Appendix B.

2. By letter dated January 26, 2010, MassDEP notified New Ventures that it had failed to comply with multiple requirements of the Settlement Agreement and Final Judgment, including, without limitation, New Ventures' failure to take the actions and measures necessary to ensure that the landfill gas extraction system, Pre-treatment System, and enclosed flare are operating in compliance with the requirements of the Final Judgment, including the performance standards in Appendix B of the Settlement Agreement.
3. New Ventures continues to fail to take adequate actions and implement such measures as are necessary to operate and adjust the landfill gas extraction system, Pre-treatment system and enclosed flare to control and mitigate the release of H<sub>2</sub>S from the Landfill into the atmosphere and to comply with the requirements of the Final Judgment, including the performance standards in Appendix B. These releases of H<sub>2</sub>S are continuing violations of Final Judgment, the provisions of 310 CMR 7.00 and 310 CMR 16.00 and cause periodic noxious odors in the surrounding neighborhood.
4. Shaw personnel and MassDEP on repeated occasions have observed New Ventures' continuing failure to take actions and measures necessary to, without limitation, operate the landfill gas system at a vacuum and flow rate sufficient to assure the optimum control of landfill gas emissions from the Landfill, as required by Appendices B and F of the Final Judgment including compliance with the requirements of 310 CMR 7.00 and 310 CMR 19.00. Such observations include, but are not limited to:
  - a. The presence of strong odors and elevated concentrations of H<sub>2</sub>S on Crow Lane in the area of Basin 1 and the discharge pipe and in storm water Basin 1 ("Basin 1") and in the discharge pipe ever since New Ventures commenced and completed the installation of the discharge pipe from Basin 1. This includes, without limitation, observations at the outfall of the discharge pipe on February 15, 2010, of a strong H<sub>2</sub>S odor and concentrations of H<sub>2</sub>S of 64 parts per million ("ppm") in the mouth of the discharge pipe and of 1.9 ppm in the ambient air in the area of the outfall, and on February 16, 2010, observation of a strong H<sub>2</sub>S odor with concentrations of H<sub>2</sub>S of 12 ppm at the top of and 21 ppm within the mouth of the discharge pipe;
  - b. The existence of no vacuum or low/minimal vacuum on landfill gas extraction wells at the Landfill including, without limitation:
    - i. on February 15, 2010, no vacuum on landfill gas extraction wells EW-3, EW-8, EW-9, EW-11, and EW-15, and
    - ii. on February 12, 2010, no vacuum on landfill gas extraction wells EW-6, EW-8, EW-9 and EW-15 and minimal vacuum of 0.1 inches on EW-3, EW-4, and EW-11; and
  - c. Releases of landfill gas from the Landfill including, without limitation on February 16, 2010, the detection of H<sub>2</sub>S at concentrations of 0.015 to 0.022 ppm at the top of the riser pipe at the horizontal landfill gas collector at landfill gas extraction well EW-10.
5. New Ventures' continuing failure to take the actions and measures necessary to, without limitation, maintain the enclosed flare in good working condition and intact as required by the Final Judgment and Appendix B as evidenced by observations of Shaw personnel and MassDEP at the Landfill, including the following observations by Shaw on February 16, 2010:
  - a. Failure to replace the interior stack insulation,
  - b. Failure to repair the auto control/automatic shutoff valve,
  - c. Failure to install the proper coupling and connector on the thermocouple wiring, and
  - d. Failure to maintain one-set of spare parts at the Landfill necessary for routine maintenance of the enclosed flare including, without limitation a flame arrestor.
6. New Ventures also continues to fail to properly repair tears and rips in the flexible membrane liner cap ("FML"). Shaw personnel have observed that the temporary repairs to the FML attempted by

New Ventures in response to the MassDEP's January 26, 2010 notice to New Ventures have not been effective as observed and reported to New Ventures in the Daily Action Items list by Shaw personnel on February 15, 2010.

7. New Ventures also continues to fail to maintain the temporary storm water controls at the Landfill as required by Appendix F of the Final Judgment, including, without limitation repairing erosion of the perimeter berm observed and reported to New Ventures in the Daily Action Items list by Shaw personnel on February 15, 2010, as previously identified in MassDEP's January 26, 2010 notice to New Ventures.
8. New Ventures has failed to submit to MassDEP the results of the Flare Inlet Sample(s) required by Appendix I Section E.4 of the Final Judgment. and
9. New Ventures has failed to completely cover and maintain using low permeability material the upper portion of the access road as observed by Shaw personnel most recently on February 19, 2010.
10. New Ventures continues to fail to take the actions and measures necessary to minimize the infiltration of ambient air into the Pre-treatment system as consistently and repeatedly observed and reported to New Ventures by Shaw personnel including, without limitation on February 15 through 19, 2010.

Paragraph 27 of the Final Judgment states, in part:

"The Department and its contractors shall have the right to access the Site at any time and without notice to: respond to odor complaints; conduct inspections; take air quality readings, leachate samples, or other samples; secure the continued installation and full operation of the LFG Pretreatment System in the event that the LFG Pretreatment System has been removed, disabled, or otherwise fails, or if New Ventures has abandoned or stopped operating the LFG Pretreatment System; secure the continued installation and full operation of the enclosed flare, including, without limitation, all piping, gas collection systems, propane tanks, and other components required to operate the enclosed flare; and otherwise inspect the Site or monitor activity to ensure compliance with all terms, conditions, and requirements of this Final Judgment and the Settlement Agreement, as well as with any other applicable administrative enforcement orders issued by the Department. The Department and its contractors shall have the right to access the Site at any time and without notice to take actions necessary to control leachate releases, pump leachate tanks, remove leachate released to wetlands, and otherwise correct any leachate management violations if New Ventures has not returned to full compliance with the leachate management requirements of Appendix E to the Settlement Agreement, Leachate Control Plan, within seventy-two (72) hours of notice from the Department. The Department and its contractors shall also, within seventy-two (72) hours of notice by the Department, have the right to access the Site at any time to take actions necessary to: (i) assure that the landfill gas system, including, without limitation, the LFG Pretreatment System, the enclosed flare, and gas collection system, is operating in full compliance with the performance standards in Appendix B to the Settlement Agreement; (ii) patch, repair, or extrusion weld any FML rips, tears, seam openings or other damage; (iii) cover, patch, or otherwise mitigate any breakouts of hydrogen sulfide or other Landfill gases from the Landfill surface; or (iv) place cover over Active or Inactive Areas of the Landfill in order to assure compliance with the requirements of Sections B and C of Appendix C to the Settlement Agreement, Landfill Cover Protocol. The Department also retains all rights of access to the Site under applicable state and federal law."

New Ventures must return to full compliance with the requirements of the Final Judgment and this Notice. Pursuant to paragraph 6(a) of the Corrective Action Standby Trust Agreement, MassDEP reserves the right to draw funds against the Trust Fund Property for any actions conducted by MassDEP pursuant to paragraph 27 of the Final Judgment upon notification to the Trustee as required by the Trust Agreement and 310 C.M.R. 19.051.

New Ventures must take all actions necessary to return to compliance with the Final Judgment including, without limitation, the performance standards for the operation of the pretreatment system specified in the Final Judgment and thereafter must continuously meets the Performance Standards of the Final Judgment.

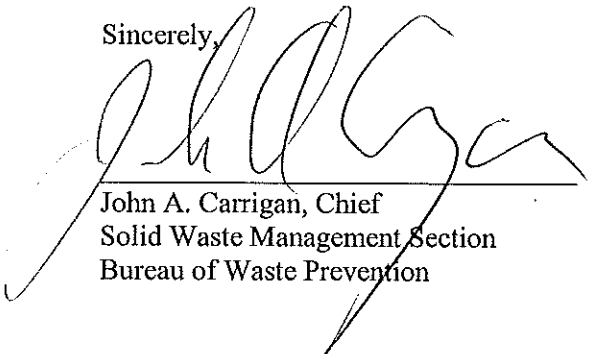
New Ventures must take all actions necessary to return to compliance with the Final Judgment including, without limitation, the operation and maintenance of the LFG System and all components thereof in accordance with the requirements Appendix B that include without limitation, operation of the LFG System twenty-four (24) hours per day seven (7) days per week, maintenance of the LFG System, and compliance with 310 CMR 7.00 and 310 CMR 19.000.

All of the response actions required above must be supervised, overseen and directed by the Engineer of Record as required by the Final Judgment.

This notice is provided by email pursuant to Section 26 of the Final Judgment and by certified mail.

Feel free to contact me by telephone at (978) 694-3345, if you have any questions regarding this notice.

Sincerely,



John A. Carrigan, Chief  
Solid Waste Management Section  
Bureau of Waste Prevention

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7009 2250 001 5078 9159 (Nylon)

CC: Mayor Donna Holaday  
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Newburyport, MA 01950

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Newburyport  
New Ventures Associates, LLC (aka. Crow Lane Landfill)

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Michael Dingle, MassDEP/OGC-Boston (by email)

Matthew Ireland, Office of the Attorney General, Boston, MA (by email)